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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,352

07/10/2006

Florence Viaud

0512-1330

5722

466 7590 03/02/2011

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EXAMINER

BADR, HAMID R

ART UNIT

PAPER NUMBER

1781

NOTIFICATION DATE

DELIVERY MODE

03/02/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,352	<b>Applicant(s)</b> VIAUD, FLORENCE	
	<b>Examiner</b> HAMID R. BADR	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicants' amendment filed 12/15/2010 is acknowledged.

Rejection of claims 1-24 under 35 U.S.C. 112 second paragraph is withdrawn per applicants remarks.

Claims 1-24 are being considered on the merits.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahlstrom et al. (US 6,319,526; hereinafter R1) in view of Kharrazi (US 4,719,113; hereinafter R2).

3. R1 discloses a process of manufacturing a mozzarella variety of cheese or a mozzarella-like cheese wherein the curd form a fibrous mass. (Abstract)

4. R1 discloses that dairy and non-dairy ingredients can be added to the comminuted curd (col. 4, lines 27-31).

5. R1 teaches of incorporating dairy ingredients into the cheese including yogurt and cheese. Such ingredients can be added at 5 to 50% weight basis. (col. 4, lines 59-67) Given that cheese can also be mixed in, it is clear that a mixture of cheeses as presently claimed can also be processed together.

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6. Given that a range of GRAS materials can be mixed in the cheese mass, it is obvious that dry matter content of the cheese mass can be increased or decreased as desired and as presently claimed in claim 24.

7. R1 teaches that the texture development temperature is commonly in the range of 135-150 F. (about 57C to about 67C). (col. 5, lines 52-55)

8. R1 discloses the process of heating the curd using waterless cookers. R1 also discloses that the process produces a fibrous mass. (col. 5, lines 10-25).

9. Given that R1 discloses a fermented milk product such as yogurt can be mixed in processed with the cheese, incorporating other fermented milks such as kefir, as presently claimed, would be obvious to those of skill in the art.

10. Since R1 teaches of incorporating GRAS materials into the cheese and noting that the incorporation of dried fruits, vegetables, nuts, pepper etc. into cheese products is also known in the art. Therefore, the incorporation of apricot pieces into the processed cheese, as presently claimed, will be obvious to those of skill in the art.

11. While R1 discloses a process and the resulting processed cheese in detail, it is noted that R1 is silent regarding the cooling of the cheese mass before mixing with the yogurt product.

12. R2 discloses a yogurt food product having the consistency of cheese. (Abstract).

13. R2 discloses a process where the base ingredients are mixed and heated to about 82C. The base is then cooled to about 37C and yogurt is mixed with the cooled base. (Col. 2 line 50 to col. 3, line 19).

14. R2 discloses that a mozzarella-yogurt product can be made. (col. 3, lines 52-59)

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15. Given that the yogurt is added to the cooled base mixture, as disclosed by R2, the process will have certain advantages namely; protection of the live culture in the added yogurt, prevention of curdling of yogurt at high temperature and low pH, and protection of the flavor imparted by yogurt to the finished product.

16. It is also noted that since some of the yogurt bacteria (lactic acid bacteria) are not heat tolerant, a known fact in the art, it is obvious to cool the mass of cheese before mixing it with yogurt containing live culture, as presently claimed, at least to a temperature to be tolerated by yogurt bacteria.

17. R1 discloses the process and the product where natural cheese may be mixed with yogurt to produce a fibrous cheese and R2 teaches of mixing the yogurt with a base which is cooled before mixing the yogurt in. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to follow the teachings of R1 and mix in the yogurt at a lower temperature as taught by R2. One would do so to protect the live culture in the yogurt, to protect the flavor and prevent the curdling of the added yogurt at low pH and high temperature. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in making the processed cheese containing yogurt.

### ***Response to Arguments***

Applicants' arguments have been carefully reviewed. These arguments are not persuasive for the following reasons.

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1. Applicants argue that R1, while motivating for adding yogurt to the cheese product, but the addition of yogurt is done prior to working of curd, and that R1 does not teach cooling the mass before adding the yogurt.

a. The rejection of claims is an obviousness type rejection involving the combined teachings of two references. If R1 taught the addition of yogurt, after cooling the mass as presently claimed, it would be a 102(b) reference. Addition of dairy products including yogurt to a cheese product is clearly motivated by R1. On the other hand, R2 teaches of adding yogurt to a cheese product after cooling the mass. Furthermore, R2 clearly discloses a mozzarella-yogurt product (col. 3, lines 52-59).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R. Badr  
Examiner  
Art Unit 1781

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1781